

GCG3WILS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR 95 (AJN)

5 BRADLEY WILSON,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 16, 2016
12:45 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 JESSICA FEINSTEIN

Assistant United States Attorney

17 RUHNKE & BARRETT

Attorneys for Defendant

18 JEAN D. BARRETT

GCG3WILS

Sentence

1 THE DEPUTY CLERK: U.S. v. Bradley Wilson. Parties,
2 please state your name for the record, starting with the
3 government.

4 MS. FEINSTEIN: Good afternoon, your Honor. Jessica
5 Feinstein for the government.

6 THE COURT: Good afternoon.

7 MS. BARRETT: Good afternoon, your Honor. Jean
8 Barrett on behalf of Bradley Wilson, and I ask you please
9 excuse my voice. It's getting better.

10 THE COURT: Understood. Good afternoon, Ms. Barrett;
11 good afternoon, Mr. Wilson.

12 THE DEFENDANT: Good afternoon.

13 THE COURT: We're here today for sentencing in United
14 States v. Bradley Wilson, 15 CR 95.

15 In preparation for today's proceeding I have reviewed
16 the probation report, which is dated October 4, 2016. I've
17 also received and reviewed the following additional
18 submissions: I have the defendant's submission, which the ECF
19 filing date is December 9, 2016. Attached to the memorandum
20 are a number of certificates of participation and completion in
21 various study programs that Mr. Wilson has taken part in while
22 incarcerated, certificates of achievement as well. And then
23 there are letters from a number of family members of Mr. Wilson
24 as well as a reverend and the founder of an organization called
25 Lead by Example, a program that Mr. Wilson has participated in

GCG3WILS

Sentence

1 while at the MCC, and he's been invited to continue with
2 following his incarceration. So that's what I have from the
3 defense. And then I have the government's submission which is
4 dated December 14, 2016.

5 Counsel, is there anything else I should have in front
6 of me for purposes of sentencing?

7 MS. BARRETT: Yes, your Honor. On the 14th I believe
8 I filed or the morning of the 15th I filed a letter on behalf
9 of Mr. -- that Mr. Wilson wrote.

10 THE COURT: Yes.

11 MS. BARRETT: So it is a three-page letter.

12 THE COURT: I do see that now and I had missed it, so
13 I'm actually going to take a moment to read it. Since it is a
14 little bit long, I'll step down and do that.

15 MS. BARRETT: Thank you, your Honor.

16 THE COURT: And I'll return shortly.

17 (Recess)

18 THE COURT: Thank you, counsel. I did receive the
19 December 14 letter from counsel which attached the -- it's
20 dated December 16th, that must be a mistake. But in any event,
21 I have the letter from Mr. Wilson that was submitted by counsel
22 with a cover letter dated December 14, 2016, and I have read
23 that letter now.

24 Counsel, is there anything else I should have in front
25 of me for purposes of sentencing?

GCG3WILS

Sentence

1 MS. BARRETT: Not from the defense, your Honor.

2 MS. FEINSTEIN: No, your Honor.

3 THE COURT: Can you please confirm you've received
4 each other's submissions?

5 MS. FEINSTEIN: I have, except for the letter that was
6 written by the defendant but --

7 THE COURT: It was ECF filed, it's docket number 873.

8 MS. FEINSTEIN: That's fine, your Honor.

9 THE COURT: Thank you. All right. Let's turn to the
10 presentence report. Let me begin with Ms. Barrett. I know you
11 have, but for the record, have you reviewed the presentence
12 report and discussed it with your client?

13 MS. BARRETT: I have, your Honor.

14 THE COURT: Mr. Wilson, did you have an opportunity to
15 read the presentence report?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: You had an opportunity to raise with your
18 lawyer any errors in the report or anything else that should be
19 taken up with me regarding the report?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: Thank you. And Ms. Feinstein, can you
22 confirm that you read the presentence report as well?

23 MS. FEINSTEIN: I have.

24 THE COURT: So we'll put aside for the moment the
25 calculation of the sentencing guidelines. Are there any

GCG3WILS

Sentence

1 continuing objections to the report regarding factual accuracy,
2 Ms. Barrett?

3 MS. BARRETT: Yes, your Honor. With regard to
4 paragraphs 23 and 27, I raised this in my memorandum, I also
5 raised it with probation, and probation has put a footnote as
6 to those two paragraphs. And I would ask that those paragraphs
7 be removed because there is no -- there has been no factual
8 submission in support of it.

9 THE COURT: So taking paragraph 23, it I says on
10 October 2, 2013, at White Plains Road and 232nd Street, Wilson
11 was arrested after he sold marijuana to an undercover police
12 officer. And then the footnote notes that defense counsel
13 maintains that this was a case of mistaken identity and should
14 be removed from the report.

15 Ms. Feinstein.

16 MS. FEINSTEIN: Your Honor, let's take paragraph 23.
17 That paragraph is based upon a sealed arrest record which was
18 produced to the defense as part of discovery. I have a copy
19 here. I don't think it doesn't say he was convicted of it. It
20 doesn't -- it simply says he was arrested. Perhaps the wording
21 could be changed to "on the basis of sale to marijuana" instead
22 of saying "after he sold" since it is just an arrest record.
23 Maybe that will take care of the parties' dispute about the
24 facts.

25 MS. BARRETT: Your Honor, first of all, we did not

GCG3WILS

Sentence

1 receive or review discovery because the plea was entered into
2 in this case prior to that. I would think that if there were
3 any documented information, that it should have been supplied
4 to the Court and counsel as part of the government's
5 submission. And I would again maintain that this should not
6 be, because it is not part of his official criminal history in
7 any way whatsoever. It could be on an index card in whatever
8 precinct some police officer had an encounter with him. We
9 don't know. It's not on his criminal history, and there is no
10 documentation that he was ever convicted of anything or even
11 processed.

12 THE COURT: Well, so Ms. Feinstein, is it right that
13 defense didn't -- you have an arrest record in front of you?

14 MS. FEINSTEIN: I do, your Honor, and I'm happy to
15 provide it. I only have one copy. I can give it to defense
16 counsel and to your Honor. I will also say this is a pretty
17 minor point here, I'm not sure --

18 THE COURT: I agree it is a minor point. It is not
19 going to affect my sentencing. Given that the documentation
20 that you have is not produced in discovery, or as part of the
21 written sentencing submissions, my inclination is to strike it
22 from the report.

23 MS. FEINSTEIN: Understood, your Honor.

24 THE COURT: Paragraph 23 will be struck.

25 Turning to 27 which reads: On February 18, 2016,

GCG3WILS

Sentence

1 officers found him, referencing Mr. Wilson, in possession of
2 marijuana and a kitchen knife during a traffic stop. And then
3 the footnote responded to defense counsel's objection that the
4 knife was in fact a small pocketknife and was returned to
5 Mr. Wilson because the police considered it a tool, not a
6 weapon. And defense counsel also argues that no marijuana was
7 found.

8 Ms. Feinstein.

9 MS. FEINSTEIN: We consent to striking that from the
10 PSR.

11 THE COURT: Thank you. Paragraph 27 will also be
12 struck. Anything else, Ms. Barrett?

13 MS. BARRETT: That's it, your Honor.

14 THE COURT: Thank you. And Ms. Feinstein, any
15 objections from the government regarding factual accuracy?

16 MS. FEINSTEIN: No, your Honor.

17 THE COURT: With the two noted paragraphs, 23 and 27,
18 struck, I otherwise adopt the factual recitations set forth in
19 the PSR. The report will be made a part of the record in this
20 matter and placed under seal. If an appeal is taken, counsel
21 on appeal may have access to the sealed report without further
22 application to this Court.

23 Turning to the guideline calculation, as counsel is
24 aware, I am no longer required to follow the United States
25 sentencing guidelines, but I am still required to consider the

GCG3WILS

Sentence

1 applicable guidelines in imposing sentence, and must therefore
2 accurately calculate the sentencing guideline range.

3 In this case, there was a plea agreement to which the
4 parties stipulated to a particular calculation of the
5 sentencing guidelines. Counsel, am I correct that the
6 calculation in the PSR is in accord with that agreement?

7 MS. BARRETT: It is, your Honor.

8 MS. FEINSTEIN: Yes, your Honor.

9 THE COURT: And I presume no objections?

10 MS. BARRETT: That's correct, your Honor.

11 MS. FEINSTEIN: Correct.

12 THE COURT: Based on the parties' agreement and the
13 absence of objection and my independent evaluation of the
14 sentencing guidelines, I do accept the guideline calculation in
15 the PSR. Accordingly, using the August 1st, 2016 guideline
16 manual, I do find that the offense level is 27, criminal
17 history category is I, and the guideline range is 70 to 87
18 months' imprisonment.

19 Your plea agreement also indicated I believe that
20 counsel would not seek either an upward or downward departure
21 within the guideline system, though of course you've reserved
22 the right to make arguments for a variance, but am I correct
23 that neither side is seeking an upward or downward departure
24 within the system?

25 MS. BARRETT: That's correct, your Honor.

GCG3WILS

Sentence

1 MS. FEINSTEIN: That's correct.

2 THE COURT: Nevertheless I've considered whether there
3 is an appropriate basis for departure from the advisory range
4 within the guidelines system, and did not find any grounds
5 warranting departure under the guidelines. Though, as I've
6 indicated, the parties are free to, and I will hear arguments
7 regarding a variance.

8 Ms. Feinstein, does the government wish to be heard
9 with respect to sentencing?

10 MS. FEINSTEIN: Your Honor, we did submit a written
11 sentencing submission and I will rest on that.

12 THE COURT: All right. Ms. Barrett.

13 MS. BARRETT: Yes, your Honor. Briefly, because we
14 submitted a pretty comprehensive sentencing submission with
15 documents with regard to --

16 THE COURT: Ms. Barrett, because your voice is weak
17 like mine with the cold, if you pull up even closer.

18 MS. BARRETT: How's that? Is that okay?

19 THE COURT: That's better. Thank you.

20 MS. BARRETT: Okay. So, your Honor, and as your Honor
21 probably knows from our submission, we're asking for a
22 significant variance, and I understand that it is a significant
23 variance. And there are two reasons for that variance. One of
24 them the government acknowledges, and that is that there's been
25 substantial post-arrest rehabilitation in this case. And the

GCG3WILS

Sentence

1 Supreme Court has ruled in the past that post-arrest
2 rehabilitation is a significant consideration in terms of
3 sentencing and can form the basis of variances and
4 consideration under 3553(a). It fits right into the idea of
5 character and the character of the accused.

6 The second reason is, and I'm not asking for a
7 departure based on this, but I'm asking for the Court's
8 consideration of the fact that there is a dramatic -- still
9 dramatic disparity in terms of the kinds of sentences that are
10 imposed on individuals who are charged with distribution of
11 crack as opposed to regular cocaine powder cocaine.

12 And what I pointed out, and I just wanted to emphasize
13 to the Court again, is that had Mr. Wilson pled guilty to
14 280 grams of cocaine, an 18-month sentence would be within the
15 guidelines. And the fact of the matter is that it has been
16 well established that the disproportionality of these
17 guidelines has a serious impact on young men of the
18 African-American community, and as Mr. Wilson obviously is.
19 And I would urge the Court to consider that in terms of
20 fashioning a sentence that is fair and just and proportionate,
21 and proportionality is one of the important considerations
22 besides the character of the defendant and the nature of the
23 offense. Proportionality in sentencing is an important
24 consideration, and is a consideration under the 3553(a)
25 factors.

GCG3WILS

Sentence

1 And I would submit that a young man who has committed
2 no acts of violence, who has been engaged in hand-to-hand
3 conduct on the street corner in the Bronx in selling crack, it
4 should not be punished more severely or punished as though he
5 were a multinational drug importer. I mean, when we talk about
6 the guideline level of level 30, with the three points of
7 acceptance of 27, an individual who is responsible for five to
8 15 kilos of cocaine fits there. Not somebody who is selling
9 hand-to-hand cocaine on the street, or even at whatever parties
10 people are in attendance at where cocaine is distributed.

11 I would submit this is a fair and just sentence that
12 we seek of 18 months, and that it will also enable him to begin
13 his rehabilitation out on the street. To work with
14 Mr. Hendrickson on the project, to participate in his
15 community.

16 And I also wanted to point out, too, the probation
17 office has emphasized this, the support that he has of his
18 family. His mom, his dad, and his brother are here today. Are
19 here today to support him, and they will continue to support
20 him and to assist him in process of rehabilitation. I only ask
21 the Court to let that process begin sooner rather than later.
22 Thank you.

23 THE COURT: A few questions, Ms. Barrett.

24 MS. BARRETT: Certainly.

25 THE COURT: The letter from Mr. Hendrickson that

GCG3WILS

Sentence

1 speaks positively of Mr. Wilson and invites him to participate,
2 can you give me a sense of what that might look like.

3 MS. BARRETT: The program is a program where offenders
4 counsel young people in the community and try to set them on a
5 path, a favorable path. I took some pages out of the website.

6 THE COURT: I assume they had been attached to the
7 letter.

8 MS. BARRETT: No, it wasn't a -- it was attached to my
9 letter, your Honor. And the pages in the website refer to
10 their mission as being the organization was created to help
11 prepare young people in disadvantaged communities for adulthood
12 through redirection and empowerment, enhancing communications
13 and social skills. Our mentors, which Mr. Wilson would be one
14 of them, help young people become positive, assertive adults
15 who have a strong sense of self-awareness. Many of our mentors
16 have lived the life, they're real people with histories and
17 personal experience of real issues facing young people in
18 disadvantaged communities today. Our mentors are not academics
19 coming in to troubled communities to tell young people that
20 their behavior, whether it be truancy, violence, drugs and
21 crime, will land them in trouble. Many of our mentors did skip
22 school, did join gangs, and did commit crimes. All have paid
23 their dues and don't want others to make the same mistakes.
24 Our mentors are talking from experience and there is nothing
25 more powerful than that. More importantly, our mentors want to

GCG3WILS

Sentence

1 give back.

2 And that's basically --

3 THE COURT: But can you give me a -- so my question
4 is, so Mr. Wilson would presumably serve as a mentor. What
5 does that mean? Is that sort of weekly involvement, monthly
6 involvement, does it happen once or twice, does it last for
7 years? What would it look like?

8 MS. BARRETT: Maybe Mr. Wilson can describe it for
9 your Honor.

10 THE COURT: Go ahead, Mr. Wilson.

11 THE DEFENDANT: The program will serve me, like,
12 monthly basis as I get to know and be more familiar, talk to
13 individuals. Probably it will go on for as like a yearly
14 thing, depending on how good I could present myself to the
15 people.

16 THE COURT: So, you imagine participating maybe once a
17 month?

18 THE DEFENDANT: Yeah, probably more frequently, as
19 much as they need me to be.

20 THE COURT: So could be once a week or something like
21 that?

22 THE DEFENDANT: Right.

23 THE COURT: It would last at least a year?

24 THE DEFENDANT: Correct.

25 THE COURT: Assuming you do a good job?

GCG3WILS

Sentence

1 THE DEFENDANT: Right.

2 THE COURT: Thank you, Mr. Wilson.

3 THE DEFENDANT: You're welcome.

4 MS. BARRETT: Your Honor, we would consent to making
5 that a condition of supervised release.

6 THE COURT: You anticipated my next question. So, in
7 the terms of that would include weekly, Mr. Wilson will
8 participate on a weekly basis with this program and will
9 continue that for some period of time? Is that what it would
10 look like?

11 MS. BARRETT: Based on probation's consultation with
12 Mr. Hendrickson, I would think could be added to that.

13 THE COURT: Okay. I am trying to think creatively.
14 The number of defendants in this case means that we have a lot
15 of folks who were members of each other's community were
16 arrested at the same time, some of whom, depending on the
17 length of the prison sentence, will all return at the same
18 time. And I'm hopeful that there are ways of thinking about
19 interventions to the same patterns just not repeating.
20 Obviously probation supervision will be important to that, but
21 I think programs like this may provide some additional
22 assistance to get folks like Mr. Wilson out of the gang
23 community, at least try to redirect some of those ties into
24 non-violent, non-illegal efforts, and this struck me as a
25 positive one in that regard.

GCG3WILS

Sentence

1 So that's one question, no objection, and on consent
2 to a condition of supervised release that would require, with
3 consultation of probation, regular and continued involvement in
4 this program.

5 MS. BARRETT: Yes, your Honor.

6 THE COURT: The other thing I wanted to ask
7 Ms. Barrett, obviously Mr. Wilson has no criminal history score
8 and no prior convictions. Could you address, there are I think
9 two pending charges and arrests. Could you address those?

10 MS. BARRETT: Yes. I believe that the pending charge
11 in the city is being dismissed by the district attorney, or has
12 already been. And in addition to that, it's our understanding
13 that the Westchester County case will be resolved. I've been
14 in touch with the lawyer in Westchester County, and she has
15 told me that it will be resolved following the Court's
16 imposition of sentence. And we anticipate that that will be a
17 concurrent state time within the parameters of what the Court
18 sets here.

19 THE COURT: He does have one prior conviction for
20 disorderly conduct.

21 MS. BARRETT: Yes, your Honor.

22 THE COURT: That arose out of a drug arrest.

23 MS. BARRETT: Yes, your Honor, and that is within the
24 confines of this conspiracy.

25 THE COURT: Okay. Otherwise there is no criminal

GCG3WILS

Sentence

1 history.

2 MS. BARRETT: That's correct, your Honor.

3 THE COURT: That is a positive sign and not typical.

4 Then I think the other point to address, Ms. Barrett, if you
5 would, it's true that this is hand-to-hand drug selling, but it
6 is regular and over time, and of course it aided this gang
7 which is a violent gang. And Mr. Wilson is not a member, but
8 associated by virtue of his crack sales. And I do think that
9 increases the level of seriousness of the crime in a way that
10 requires me to think about, as an appropriate purpose of
11 punishment, reflecting that seriousness as well as deterrence
12 and protecting the public.

13 As you know, these neighborhoods were ravaged by the
14 gang violence and drug sales of this and rival gangs and I have
15 to make sure that is accurately reflected in all of the
16 punishments that I impose here.

17 Could you address that.

18 MS. BARRETT: Yes, your Honor. I would emphasize with
19 the Court the need for individual consideration of the people
20 involved in this. Mr. Wilson was a young man who was obviously
21 pretty naive about what he was getting involved in, in my
22 opinion. And I think that under the circumstances of this
23 case, certainly drug distribution is a plague of the
24 communities, of impoverished communities in New York City.
25 There is no doubt about it. But it's not exclusive to his

GCG3WILS

Sentence

1 neighborhood. It is pretty pervasive throughout the city.

2 And in terms of deterrence, I don't think that an
3 individual such as Mr. Wilson's punishment is going to act as a
4 deterrent, have a deterrent effect on what is going on in the
5 city. I think more important to that is the idea of
6 rehabilitation. And the idea that there is something called
7 redemption for individuals, even serious drug offenses.

8 And in terms of the scale of things here, I know that
9 the government and probation describes Mr. Wilson as midlevel.
10 I don't really understand what that is. It's kind of like the
11 whole naming names of something that have little or no meaning
12 or context. Here, we're talking about -- if you're talking
13 about a drug community, we're talking putting him on the lowest
14 rung of the ladder. There is nobody lower than the person who
15 is selling hand-to-hand on the corner. He is on the bottom of
16 this pile.

17 And with regard to his rehabilitative efforts, I think
18 it is more important to encourage those than it is to set an
19 artificial example of him. I'm not saying that there aren't
20 people who should have examples set. I represent a lot of
21 people like that. And there are many people in this indictment
22 who have been engaged in violent criminal activity. He has
23 not.

24 He got picked up, scooped up in a much larger
25 investigation. And that investigation, while he as a matter of

GCG3WILS

Sentence

1 course, if you're going to sell drugs in the territory of a
2 gang, you are going to have to get your drugs from the gang.
3 You're not going to be able to get your drugs from Joe Schmo
4 and go out and sell it in their territory.

5 So obviously drug distribution is a serious offense,
6 that's why we're here in federal court, that's why he's facing
7 serious time. But it doesn't mean that that has to be imposed.
8 And it doesn't mean that his rehabilitative efforts should not
9 be encouraged by letting him return to his community within a
10 reasonable period of time.

11 THE COURT: Thank you, Ms. Barrett.

12 Ms. Feinstein, can you address the terminological
13 significance point that Ms. Barrett is making about midlevel
14 drug dealer? What would be a lower-level drug dealer in this
15 case or otherwise?

16 MS. FEINSTEIN: Absolutely, your Honor. Here I think
17 midlevel is not a technical term, Judge. It is in comparison
18 with other individuals in this case. He wasn't selling
19 wholesale drugs to other drug dealers, so he is not a
20 high-level drug dealer, we'll put it that way. He also was not
21 someone who on one or two occasions sold a few bags of crack.
22 This is someone who was arrested, you know, you can see on
23 paragraph 26 of the PSR and paragraph 25 of the PSR and
24 paragraph 22, with significant quantities of crack on him. 22
25 bags of crack on one occasion, 11 on another, 29 on another.

GCG3WILS

Sentence

1 That's not like four or five, that's not just a few here or
2 there. This is someone who is regularly out there selling, and
3 those amounts, even if you're just a hand-to-hand dealer, which
4 I don't think we dispute, they add up. Those are significant
5 quantities.

6 This is someone who is, you know, his livelihood was
7 selling crack, and he was doing it under the protection of a
8 gang, a violent gang, and benefiting the gang by doing so. So,
9 that's why we think the term "midlevel" applies.

10 THE COURT: So, are there lower-level drug dealers in
11 this case?

12 MS. FEINSTEIN: I believe there are, your Honor.

13 THE COURT: So --

14 MS. FEINSTEIN: Including, for example, marijuana
15 dealers. I think it's hard to dispute that crack is a more
16 serious drug.

17 THE COURT: So he is midlevel as compared to folks who
18 sold either different types or quantity of drugs, at least as
19 you have evidence to establish.

20 MS. FEINSTEIN: Yes. And your Honor, there are
21 obviously lots of mitigating factors here and we recognize
22 those. We merely wanted to give the Court some context for
23 where he fits in the scheme of things.

24 THE COURT: I appreciate that. Every sentencing, of
25 course, is individualized, but I'm also required to ensure that

GCG3WILS

Sentence

1 there are not sentencing disparities, and I do think it's
2 important when I have 63 defendants in a case, some significant
3 number of whom are pleading guilty and I'm in the process of
4 sentencing to understand relative culpability as a factor in
5 the 3553(a) context. Though not solely, and the government I
6 think rightly concedes here that Mr. Wilson is -- I don't know
7 if you'll prove to be unusual, but I'm heartened by some of the
8 rehabilitation that I see in you, Mr. Wilson, as well as the
9 support of your family who are here and wrote to me. It gives
10 me hope. And your lack of criminal history. These are
11 important factors as I try to determine what a reasonable
12 sentence for you is.

13 Counsel, anything else from you?

14 MS. BARRETT: Your Honor, just in terms of just to
15 clarify what you're talking about in terms of bags. A bag for
16 sale of crack is a 10th of a gram. You know, it's not like --
17 so if you're taking 22 bags of crack, you're talking about
18 2 grams. So, it's still a relatively small amount for somebody
19 to be walking around with on the street. And I have nothing
20 further to add to that discussion other than to say that --

21 THE COURT: The overall quantity here as allocuted to,
22 there's no dispute, right?

23 MS. BARRETT: Correct, your Honor. And that's
24 obviously over a lengthy period of time during the course of
25 the conspiracy when he joined the conspiracy.

GCG3WILS

Sentence

1 THE COURT: Right.

2 MS. BARRETT: Which is obviously later than a lot of
3 others. So, you know, we are not disputing quantity. And but,
4 we do dispute the appropriateness of using that kind of
5 quantity to enhance the sentence by 28 times or enhance the
6 guidelines by 28 times. That is clearly something that we
7 dispute in terms of what the appropriateness of sentencing
8 here.

9 THE COURT: All right. Thank you. Mr. Wilson, I have
10 read your letter that you submitted to the Court, but you're
11 also welcome to make an oral statement to the Court if you'd
12 like to do so.

13 THE DEFENDANT: Okay, I will.

14 I apologize to you, Ms. Judge Nathan, to the Court, to
15 my family right here, for all the the wrongdoings I've done in
16 my past. And I ask that -- I know that there's no excuse for
17 what I've done, even me being financially unstable and going to
18 school, struggling with school, but I ask that I may have a
19 second chance and mercy with my sentencing, that I may become a
20 more -- more upstanding citizen in the community back in
21 society. And I could change my acts and change the way I do
22 things, and those situations and approach situations and I
23 could be more -- more -- have a more brighter future than I
24 have now. Thank you.

25 THE COURT: Thank you, Mr. Wilson.

GCG3WILS

Sentence

1 Counsel, any reason why sentence should not be imposed
2 at this time?

3 MS. BARRETT: No, your Honor.

4 MS. FEINSTEIN: No, your Honor.

5 THE COURT: As I've stated, the guideline range
6 applicable to this cases is 70 to 87 months' imprisonment.
7 Under the Supreme Court's decision in *Booker* and its progeny,
8 the guideline range is only one factor that the Court must
9 consider in deciding the appropriate sentence. I'm also
10 required to consider the other factors set forth in 18 U.S.C.
11 Section 3553(a).

12 These include the nature and circumstances of the
13 offense and the history and characteristics of the defendant,
14 the need for the sentence imposed to reflect the seriousness of
15 the offense, to promote respect for the law, and to provide
16 just punishment for the offense, to afford adequate deterrence
17 to criminal conduct, to protect the public from further crimes
18 of the defendant, to provide the defendant with needed
19 educational or vocational training, medical care or other
20 treatment. I am to take into account the kinds of sentences
21 available, as I've said, the guideline range and any pertinent
22 policy statement, and the need to avoid unwarranted sentence
23 disparities, and the need to provide restitution to any victims
24 of the offense. I am required to impose a sentence sufficient,
25 but no greater than necessary, to comply with the purposes I've

GCG3WILS

Sentence

1 just described.

2 I have given substantial thought and attention to the
3 appropriate sentence in this case, in light of the 3553(a)
4 factors and the appropriate purposes of sentencing as reflected
5 in the statute.

6 Mr. Wilson does stand convicted of what is
7 unquestionably a serious offense. He did associate himself
8 with the Big Money Bosses gang, which is a violent street gang
9 that operated in the Bronx in this particular neighborhood.
10 Big Money Bosses or BMB, as it's referred to, trafficked in
11 narcotics including crack cocaine, marijuana, and other drugs,
12 also the gang kept firearms and engaged in acts of violence,
13 including shootings, stabbing, and gang assaults. BMB has a
14 violent culture and it has a norm against snitching and
15 cooperating. And at base it is a dangerous, dangerous street
16 gang.

17 Mr. Wilson was an associate of that gang, not a
18 member. But as an associate, he was a frequent drug dealer.
19 He's been described here as a midlevel drug dealer. He was a
20 street dealer, but this was not a one-off or a short-term
21 mistake. He sold crack cocaine, which is certainly a dangerous
22 drug, over a period of time and with frequency. At the time of
23 his arrest, he was found with 22 bags of crack packaged for
24 distribution. He did regularly sell crack at the gang
25 controlled area called the Forts. This gang ravaged the areas

GCG3WILS

Sentence

1 it occupied with dangerous drugs and violence.

2 Given Mr. Wilson's role in the conspiracy, that is of
3 a drug dealer that helped facilitate this gang's activities,
4 and he participated over a period of time and with frequency
5 selling crack cocaine, I do believe that a serious sentence is
6 warranted to reflect the seriousness of the offense, to deter
7 Mr. Wilson and others, to promote respect for the law, and to
8 protect the public.

9 However, I must and I do take into account the history
10 and characteristics of this defendant. As a preliminary
11 matter, I note that Mr. Wilson pled guilty to this offense, he
12 did so early on. He has accepted responsibility. I believe
13 that his expression of remorse and acceptance of responsibility
14 both as reflected in what he said to me in court today and
15 what's written in his letter, is genuine. And I am putting
16 some reliance on my own ability as best as I can to discern
17 genuine acceptance of responsibility, and I'm crediting
18 Mr. Wilson here with that.

19 Moreover, Mr. Wilson does not have an extensive
20 criminal history. And there is no violence as charged, there
21 is a lot of violence in the indictment with respect to the gang
22 and many members, many co-defendants of Mr. Wilson. No
23 allegations of violent activity with respect to Mr. Wilson.
24 And his lack of criminal history I do think is significant, and
25 that is in contrast with many others who have been charged

GCG3WILS

Sentence

1 here.

2 There are also some very, as I've indicated and as has
3 been discussed, have been very positive post-arrest signs of
4 rehabilitation. Including, I'm encouraged by his involvement
5 in the Lead by Example program as well as his what seems to be
6 a continuing commitment to education. Mr. Wilson does have
7 education, he's expressed interest in continuing that as well
8 as in job training and seeking employment.

9 I think those are going to be critical steps for you
10 to continue taking, Mr. Wilson, upon your release.

11 The involvement of his family, as I've said, who wrote
12 to me and who are here today, his parents, I think these are
13 encouraging signs, signs of support that Mr. Wilson will have
14 following his incarceration as he takes steps towards
15 decisions, unlike the ones that he made that led him here, but
16 hopefully towards, as he said, a more productive involvement in
17 his community, and a more positive and productive life.

18 And in this regard, I have read carefully the letters
19 and other submissions on Mr. Wilson's behalf from his family
20 members. And I do think they help establish in my mind that
21 Mr. Wilson does have potential, as I've said, based on his
22 interest in education and employment, and he has the loving
23 support of his family members. I am heartened by this. And
24 hope that it all continues in the future.

25 In sum, although I am convinced that this is a serious

GCG3WILS

Sentence

1 sentence and I do believe in the necessity of reflecting the
2 seriousness in light of the damage to the community done by
3 this gang, done by crack cocaine sales, I do believe a
4 significant variance downward is important. But the sentence
5 must also reflect the seriousness of the crime and deter
6 others.

7 I will now state the sentence I intend to impose.
8 Mr. Wilson, will you please rise.

9 It is judgment of this Court that you're remanded to
10 the custody of the bureau of prisons for 24 months to be
11 followed by a period of three years of supervised release. You
12 may be seated.

13 During your term of supervised release, the standard
14 conditions of supervision shall apply. In addition, you'll be
15 subject to the following mandatory conditions: You shall not
16 commit another federal, state or local crime; you shall not
17 illegally possess a controlled substance; you shall not possess
18 a firearm or destructive device. The mandatory drug testing
19 condition will be suspended because I'll be imposing a special
20 condition requiring drug treatment and testing. You shall
21 cooperate in the collection of DNA as directed by the probation
22 officer.

23 In addition, the following special conditions must be
24 met: You shall participate in an outpatient treatment program
25 approved by the United States probation office, which program

GCG3WILS

Sentence

1 may include testing to determine whether you've reverted to
2 using drugs or alcohol. You'll be subject to the search term
3 that's outlined on page 29 of the presentence report. You'll
4 report to the nearest probation office within 72 hours of
5 release. And I do recommend you be supervised in your district
6 of residence.

7 In addition, as we've discussed, I am going to make it
8 a condition of supervision that you do maintain your
9 participation in the Lead by Example program. Of course this
10 will be with consultation with the probation officer, as well
11 as Mr. Hendrickson, the leader of this program. But it would
12 be anticipated that Mr. Wilson would have weekly participation
13 in the program, and that it would continue during the period of
14 his supervision. Again, though, pending consultation with
15 Mr. Hendrickson and the probation office, but it will otherwise
16 be a term of supervision.

17 I will waive the fine as I don't believe defendant has
18 the ability to pay the fine.

19 Ms. Feinstein, nothing here with regard to forfeiture
20 or restitution?

21 MS. FEINSTEIN: No, your Honor.

22 THE COURT: I am imposing a mandatory special
23 assessment of \$100 which shall be due immediately.

24 Does either counsel know of any legal reason why the
25 sentence shall not be imposed as stated?

GCG3WILS

Sentence

1 MS. FEINSTEIN: No, your Honor.

2 MS. BARRETT: No, your Honor. Thank you.

3 THE COURT: The sentence as stated is imposed. I do
4 find that it is sufficient, but no greater than necessary, to
5 satisfy the sentencing purposes that I've described earlier.

6 I will say again for the record that the sentence that
7 I am imposing, the significance of the variance here turns in
8 particular on Mr. Wilson's lack of criminal history, the
9 support of his family members, his participation in this Lead
10 by Example program, and my judgment, and that is at the end of
11 the day what I'm left with, Mr. Wilson, that this will be a
12 significant life changing experience for you. And that while I
13 see many people, many defendants involved in drug narcotics
14 activity who continue to repeat those choices, I am placing
15 some faith in you that, with the support of your family, that
16 will not be the case here.

17 And though I don't doubt you'll face difficulties,
18 financial and otherwise, going forward, you will make better
19 choices for you and for your family.

20 When you are released and on supervised release,
21 Mr. Wilson, you will have the guidance and support of the
22 probation department as you reestablish your day-to-day life
23 during your period of supervision. Do take advantage of those
24 resources, as the folks in probation are committed to helping
25 you succeed.

GCG3WILS

Sentence

1 That said, I must caution you, you must comply
2 strictly with all of the conditions of your supervised release
3 that I've imposed. If you're brought back before me for a
4 violation of those conditions, I may sentence you to another
5 term of imprisonment. I hope and I expect you won't put me to
6 that decision.

7 Ms. Barrett, any requests regarding designation or
8 otherwise?

9 MS. BARRETT: Just designation in the most appropriate
10 facility as close as possible to his family, your Honor. I
11 don't think -- the bureau of prisons is the bureau of prisons.

12 THE COURT: Yes. Well, I will recommend that he be
13 considered for placement -- his family is in the New York City
14 area?

15 MS. BARRETT: That's correct.

16 THE COURT: For placement in a facility as close to
17 the New York City area as possible to help facilitate
18 maintenance of ties with his family.

19 MS. BARRETT: Thank you, your Honor.

20 THE COURT: Ms. Feinstein, are there remaining counts
21 or underlying indictments that need to be dismissed at this
22 time?

23 MS. FEINSTEIN: We move to dismiss all open counts.

24 THE COURT: Granted.

25 Mr. Wilson, I see no basis for an appeal. But I am

GCG3WILS

Sentence

1 required to inform you of your appellate rights. To the extent
2 that you have not given up your right to appeal your conviction
3 and sentence through your plea of guilty, and the agreement
4 that you entered into with the government in connection with
5 that plea, you do have the right to appeal. If you are unable
6 to pay the cost of an appeal, you may apply for leave to appeal
7 in forma pauper. The notice of appeal must be filed within 14
8 days of the judgment of conviction.

9 Counsel, is there anything else I can address at this
10 time?

11 MS. BARRETT: No, thank you, your Honor.

12 MS. FEINSTEIN: No, thank you.

13 THE COURT: Thank you. Mr. Wilson, good luck to you,
14 sir.

15 THE DEFENDANT: Thank you. God bless you, Judge
16 Nathan.

17 THE COURT: You too.

18 o0o
19
20
21
22
23
24
25